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IRRATIONALITY AND SACRIFICE IN THE WELFARE REFORM CONSENSUS

*Dorothy E. Roberts**

AN important question in the controversy over welfare reform is how the state should address the problem of children's poverty. Liberals and conservatives approach this question with different philosophies about poor people's childbearing and the relationship between public assistance and children's welfare. Nevertheless, at least since the 1980s, liberals and conservatives have reached a consensus regarding welfare's social harms, the condemnation of recipients' (especially single mothers') irresponsibility, and the promotion of policies designed to reduce welfare dependency, such as work requirements and tougher enforcement of child support obligations. New Republican proposals to slash drastically welfare for children threaten to shatter this consensus and have sent policymakers in search of a new "middle ground."¹

Professor Stephen Sugarman's article, *Financial Support of Children and The End of Welfare As We Know It*,² makes an important contribution to the welfare debate by demonstrating the unfairness of our system, which gives dignified and generous Social Security benefits to children of deceased fathers while doling out stigmatized and inadequate AFDC benefits to children of absent fathers. Sugarman's proposal, however, retains critical elements of the system's unfairness. While rejecting major parts of the conservative agenda, Sugarman proposes a child support assurance scheme that might please conservatives and liberals alike. Yet once Sugarman refutes the conservatives' irrational premises, we are left with this fundamental question: does the state have an obligation to guar-

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¹ See, e.g., David Whitman & Matthew Cooper, *The End of Welfare—Sort of*, U.S. News & World Rep., June 20, 1994, at 28 (discussing President Clinton's welfare reform proposal, The Work and Responsibility Act of 1994).

² See Stephen D. Sugarman, *Financial Support of Children and The End of Welfare As We Know It*, 81 Va. L. Rev. 2523 (1995).

antee at least a minimal level of welfare to all children?³ I see less room for compromise on this issue than Sugarman does. When liberals have made concessions in the past, they have consistently sacrificed the interests of the most vulnerable children, especially black children. Even so, it might be argued that Sugarman's proposal at least has the advantage of practicability. With that in mind, I suggest an alternative strategy for sustaining the progressive vision of an inclusive and dignified welfare system.

I. REJECTING CONSERVATIVE PREMISES

A first step in analyzing the wisdom of compromising with conservatives is to peel away the layers of faulty reasoning that support their proposals and see what remains. Sugarman notes several aspects of the conservative agenda that are so extreme that they leave no room for consensus across ideological lines. I want to focus on three related conservative premises that should be rejected: that government support for poor children is itself a wrong, that poor people's dependence on welfare is immoral and socially harmful, and that financial support for children should be tied to marriage.

A. *Discouraging the Poor from Having Children*

Conservatives believe it is immoral to have children when one cannot afford to support them and therefore that the government should discourage such behavior.⁴ From this belief follows the conservative view that it is immoral for poor people to have children and that the government should discourage *them* from having children. This sounds suspiciously like social engineering, so some conservatives soften the claim by focusing on allegations that welfare mothers misuse taxpayer money rather than discussing their right to bear children.⁵ Thus, to conservatives, the problem to be addressed by welfare policy is not procreation by the poor per se, but the irresponsible burden it imposes on hardworking taxpayers.

³ This question may be seen as part of a broader inquiry into the state's obligation to redistribute wealth more radically and to restructure institutions that create poverty in America. Although I believe there are compelling moral and constitutional grounds for a redistributive vision beyond minimal welfare entitlements, I have constrained my argument to respond to the question Sugarman's article raises. Moreover, a bolder redistributive project is likely to include state guarantees of financial support for children.

⁴ Sugarman, *supra* note 2, at 2523-25. See also Christopher Jencks, *Rethinking Social Policy: Race, Poverty and the Underclass* 189-90 (1992) (discussing middle-class American norms regarding childbearing that the "reproductive underclass" violates).

⁵ See, e.g., 133 Cong. Rec. 35827 (Dec. 16, 1987) (statement of Rep. Roukema) ("How much longer do you think the two-worker couple will tolerate the welfare state and its cost to them in taxes to support that welfare mother?").

Conservatives avoid the more fundamental question of the state's obligations towards poor children by diverting attention from them to the irresponsible behavior of poor parents.

Conservatives assume not only that "people respond rather strongly to financial incentives," as Sugarman notes,⁶ but also that the promise of additional AFDC payments induces welfare recipients to have children.⁷ This claim is refuted by empirical research and plain common sense. Many studies have found no significant causal relationship between welfare benefits and family structure.⁸ The vast majority of welfare mothers have only one or two children; in fact, the average number of children in a family receiving welfare is somewhat smaller than in families that do not.⁹ Moreover, fertility rates do not correspond to the level of welfare benefits provided by the states.¹⁰ In any event, it would be irrational for a woman on welfare to assume the tremendous costs and burdens of caring for an additional child given the meager increase in AFDC payments that results.¹¹

A more plausible claim is that, although poor women do not become pregnant deliberately in order to receive AFDC benefits, they are more likely to become pregnant with the security of AFDC benefits to rely on than without them. The availability of welfare lessens the financial burden poor women would otherwise have to bear in having children and therefore reduces their incentive to take every possible precaution

⁶ Sugarman, *supra* note 2, at 2534.

⁷ See, e.g., Charles Murray, *Losing Ground: American Social Policy 1950-1980*, at 154-66 (1984) (arguing that welfare shapes recipients' marital and reproductive decisions).

⁸ See Mimi Abromavitz, *Regulating the Lives of Women: Social Welfare Policy From Colonial Times to the Present* 353-54 (1988) (discussing the interaction between AFDC and family structure); William A. Darity & Samuel L. Myers, *Does Welfare Dependency Cause Female Headship? The Case of the Black Family*, 46 *J. Marriage & Fam.* 765, 773 (1984) (concluding that "[t]he attractiveness of welfare and welfare dependency exhibits no effects on black female family heads"). See also Teresa L. Amott, *Black Women and AFDC: Making Entitlement Out of Necessity*, in *Women, the State, and Welfare* 280, 282-84 (Linda Gordon ed., 1990) (examining the factors leading to the rise of single parent families in the black community).

⁹ See Marian Wright Edelman, *Families in Peril: An Agenda for Social Change* 70-71 (1987) (showing that the average number of children in a family receiving AFDC is 1.9); Joel F. Handler, *Two Years and You're Out*, 26 *Conn. L. Rev.* 857, 861 (1994) (arguing that most welfare recipients do not have large numbers of children). See also Mark R. Rank, *Fertility Among Women on Welfare: Incidence and Determinants*, 54 *Am. Soc. Rev.* 296, 298-300 (1989) (finding that AFDC mothers have lower fertility rates than the general public).

¹⁰ Rank, *supra* note 9, at 303.

¹¹ See Theresa Funiciello, *Tyranny of Kindness: Dismantling the Welfare System to End Poverty in America* 57 (1993) (noting that "[t]he average per capita amount of a welfare grant decreases as the number of persons in the household increases").

against pregnancy.¹² As conservative Mickey Kaus explains, "[w]ith AFDC in place, young girls look around them and recognize, perhaps unconsciously, that other girls in their neighborhood who have had babies on their own are surviving, however uncomfortably."¹³ Thus, welfare may not induce childbearing by indigent women, but refusing to provide welfare might discourage it. Yet this claim, without connoting moral culpability for deliberately cheating taxpayers, brings us back to the question of collective responsibility for poor children. Conservatives must also defend the denial of benefits to children born to women on welfare on these more fundamental terms.

B. The Immorality of Dependency

Conservatives also advocate AFDC cutbacks on the ground that long-term reliance on welfare is immoral and that the provision of welfare itself causes welfare dependency.¹⁴ This is essentially an argument that, even if the state has a duty towards poor children, it serves these children better by denying assistance to their parents. The conservative view holds that the reliance of the poor on welfare (rather than poverty itself) causes social problems, including the perpetuation of welfare dependency into the next generation. Mothers who receive welfare are thought to teach their children a life of dependency by undermining their children's motivation to support themselves.¹⁵

Sugarman insightfully points out that conservatives assert no similar condemnation of long-term dependency on inherited wealth, life insurance proceeds, government agricultural subsidies, and Social Security benefits.¹⁶ Indeed, we do not view such reliance on government and

¹² Lee Anne Fennell, *Interdependence and Choice in Distributive Justice: The Welfare Conundrum*, 1994 Wis. L. Rev. 235, 289 (1994).

¹³ Mickey Kaus, *The End of Equality* 117 (1992).

¹⁴ See, e.g., *id.* at 121; Lawrence M. Mead, *The New Politics of Poverty: The Nonworking Poor in America* (1992); Murray, *supra* note 7. But see Lucie E. White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 Geo. L.J. 1961 (1993) (discussing and refuting the welfare dependency thesis).

¹⁵ This worry about the intergenerational transmission of welfare dependency was reflected by Justice Clarence Thomas's condemnation of his sister's reliance on welfare: "She gets mad when the mailman is late with her welfare check. That's how dependent she is. What's worse is that now her kids feel entitled to the check too. They have no motivation for doing better or getting out of that situation." Clarence Page, *Thomas' Sister's Life Gives Lie to His Welfare Fable*, Chi. Trib., July 24, 1991, § 1, at 19. In fact, Thomas's sister, Emma Mae Martin, "worked two minimum-wage jobs while her brother attended law school, but stopped working [for four or five years] to take care of an elderly aunt who had suffered a stroke." *Id.* Both she and her eldest child were employed at the time of Thomas's appointment to the Supreme Court. See *id.*

¹⁶ Sugarman, *supra* note 2, at 2538-42.

other types of financial assistance as "dependency" at all. As feminist scholars Nancy Fraser and Linda Gordon observe, "[d]ependency . . . is an ideological term" that "carries strong emotive and visual associations and a powerful pejorative charge."¹⁷ As a result, what is considered "dependency" has changed along with major social and economic transformations. It was only with the rise of industrial capitalism that the meaning of economic independence was expanded to include the white workingman's wage labor in addition to property ownership and self-employment.¹⁸ Paupers, slaves and housewives, who were excluded from wage labor, constituted the underside of the workingman's independence and were kept economically and politically dependent.¹⁹ As major forms of dependency deemed proper in industrial usage became objectionable, "dependency" became an increasingly negative term and with greater frequency was attributed to the fault of the individual rather than the social structure.²⁰

This distinction in the moral outrage directed at different types of dependency parallels the stratification of the American welfare system into two basic categories: social insurance and what is commonly called "welfare." Social insurance (Social Security and unemployment insurance) provides a dignified entitlement to wage earners and their spouses and children, whereas welfare (mainly AFDC) doles out humiliating, undeserved relief primarily to poor single mothers.²¹ Social Security retains its political popularity because it is perceived as an insurance program despite its strong redistributive effects and its dependent clients.²² Because its beneficiaries are thought to recoup what they contributed to the program, they are neither stigmatized nor supervised. Thus, taxpayers complain about supporting poor mothers on AFDC through their income taxes, but not about the transfer of their Social Security payments

¹⁷ Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *Signs* 309, 311 (1994).

¹⁸ *Id.* at 316.

¹⁹ *Id.* at 318.

²⁰ *Id.* at 324-25.

²¹ Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890-1935*, at 1-6 (1994). Welfare programs that give benefits to poor people from general federal and state revenues also include Food Stamps, General Assistance, Medicaid, and Supplemental Security Income. Eric R. Kingon & Edward D. Berkowitz, *Social Security and Medicare: A Policy Primer* 14-15 (1993).

²² See Joel F. Handler & Yeheskel Hasenfeld, *The Moral Construction of Poverty: Welfare Reform in America* 19 (1991); Kingon & Berkowitz, *supra* note 21, at 23-25; Gilbert Y. Steiner, *The State of Welfare* 3 (1971). Social Security itself encourages some dependencies while discouraging others. It "subvert[s] adults' sense of responsibility for their parents" while promoting wives' dependence on their husbands' wages. Fraser & Gordon, *supra* note 17, at 322.

to the widows and children of deceased workers, who may even be more affluent than the taxpayers who support them.²³

The stratification of the American welfare system becomes even more suspect if we consider an even broader meaning of welfare that extends beyond AFDC and Social Security. Linda Gordon suggests that welfare "could . . . accurately refer to all of a government's contributions to its citizens' well-being."²⁴ This interpretation would include home mortgage deductions, the provision of public schools, and corporate tax breaks and would reveal that most welfare helps Americans who are not in fact poor.²⁵

Policies—such as work requirements—founded on the faulty premise that welfare perpetuates poverty and dependency have failed.²⁶ There is widespread agreement that AFDC work requirements cannot possibly bring untrained and poorly educated women into financial self-sufficiency, especially in an economy with diminishing demand for unskilled workers that is structured against women.²⁷ Workfare programs, which

²³ See Subrata N. Chakravarty & Katherine Weisman, *Consuming Our Children?*, *Forbes*, Nov. 14, 1988, at 222, 225 (noting that "a remarkable number of Social Security recipients do not need the supplement"). In 1992, nearly four million children and caretaker parents received Social Security benefits totalling about \$14 billion. Stephen D. Sugarman, *Reforming Welfare Through Social Security*, 26 U. Mich. J.L. Ref. 817, 819-21 (1993). Sugarman notes that "AFDC's budget was only fifty percent greater, even though its caseload was three times larger." *Id.* at 822.

²⁴ Gordon, *supra* note 21, at 2.

²⁵ Of the \$711 billion in federal entitlement spending in 1992, AFDC accounted for less than \$20 billion. David E. Rosenbaum, *Answer: Cut Entitlements. Question: But How?*, *N.Y. Times*, June 8, 1993, at A22. See also Theodore R. Marmor, Jerry L. Mashaw & Philip L. Harvey, *America's Misunderstood Welfare State: Persistent Myths, Enduring Realities* 86 (1990) ("At less than 4 percent of total federal social welfare spending, AFDC is fiscally an insubstantial part of the American welfare state."). A less explicit form of public income transfers, those structured through the income tax system, benefit higher income groups the most. Kingson & Berkowitz, *supra* note 21, at 14.

²⁶ Congress, at least formally, has required mothers receiving AFDC to enroll in work programs since 1971. See Johanna Brenner, *Towards a Feminist Perspective on Welfare Reform*, 2 Yale J.L. & Feminism 99, 115 (1989). Several states have implemented programs that attempt to force welfare recipients to work by cutting off benefits after two years. See, e.g., Jason DeParle, *Clinton Idea Used to Limit Welfare: States Issue Their Own Plans to Put Two-Year Curbs on Those Getting Benefits*, *N.Y. Times*, June 2, 1993, at A12. Section 202 of the House Republicans' Personal Responsibility Act similarly requires states to move welfare recipients into work programs. H.R. 4, 104th Cong., 1st Sess. (1995) [hereinafter *Personal Responsibility Act*]. For both a description of mandatory work programs and an argument that they impose involuntary servitude and therefore violate the Thirteenth Amendment, see Julie A. Nice, *Welfare Servitude*, 1 Geo. J. On Fighting Poverty 340 (1993).

²⁷ See generally Mildred Rein, *Dilemmas of Welfare Policy: Why Work Strategies Haven't Worked* (1982) (discussing various work strategies and the reasons for their

require welfare recipients to hold state-created jobs for their benefits, cost the government more than the provision of cash benefits and leave poor mothers worse off economically: welfare recipients remain at the same AFDC level but incur the added costs of going to work.²⁸

Moreover, the underlying belief that people receive welfare because they lack incentive to work (a condition to be cured by forcing them to get jobs) is refuted by the fact that most welfare recipients work while on welfare, either continuously or intermittently, when they are able to get jobs.²⁹ Many women who work full-time still live in poverty.³⁰ Thus, any work disincentive that exists is not caused by overly generous welfare benefits, but by the miserable conditions of available full-time jobs: poverty wages, loss of welfare benefits, and inadequate child and health care.³¹ As a result, reducing the need for AFDC will require dramatic economic and social changes, including aggressive job creation, a higher minimum wage (or a guaranteed minimum income), lower marginal tax rates on welfare recipients' earnings, better schools and effective job training, subsidized child and health care, and elimination of inequalities in the labor market—changes that conservatives are apparently unwilling to pursue.³² So, again, conservatives must confront the question whether the state has an obligation to support the children who will inevitably need financial assistance.

ineffectiveness); Martha Minow, *The Welfare of Single Mothers and Their Children*, 26 Conn. L. Rev. 817, 831-38 (1994) (arguing that "the welfare reforms of the past five years are not reforms but instead reiterations of longstanding lines of social cleavage" that are unlikely to help women). *Id.* at 819. See also Diana Pearce, *Welfare Is Not for Women: Why the War on Poverty Cannot Conquer the Feminization of Poverty*, in *Women, the State, and Welfare*, supra note 8, at 265, 267-69 (describing the uniqueness of female poverty).

²⁸ Handler, supra note 9, at 864.

²⁹ *Id.* at 861; Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 Conn. L. Rev. 879, 882 (1994). See also Kathryn Edin & Christopher Jencks, *Reforming Welfare*, in Jencks, supra note 4, at 204, 205-11 (describing how poor mothers in Illinois combine work and welfare in order to survive); Kathryn Edin, *Surviving the Welfare System: How AFDC Recipients Make Ends Meet in Chicago*, 38 Soc. Probs. 462 (1991) (same).

³⁰ Pearce, supra note 27, at 269.

³¹ See Jencks, supra note 4, at 223-26; Fennell, supra note 12, at 281. As an officer in a California work program explained: "[A] single woman with three children, who has to pay for child care, can't live off \$6 an hour. That is an economic reality that goes beyond the welfare cycle we want to break." Sara Rimer, *Jobs Program Participants: Still Poor and in Need of Aid*, N.Y. Times, Apr. 10, 1995, at A1, B10.

³² For example, conservatives in Congress failed to fund welfare work program provisions for job training, subsidized child care, health care, and job creation. See *infra* notes 75-76 and accompanying text.

C. Tying Entitlements to Marriage

According to the conservative vision, single motherhood is especially immoral and harmful, in part because conservatives see poverty as resulting from out-of-wedlock child birth.³³ Although families headed by single females are disproportionately poorer than families with an adult male present,³⁴ this correlation does not prove that single motherhood causes poverty or that marriage or paternal child support will ensure children's financial welfare.³⁵ Rather, children's poverty results from inadequate family income, due to the declining ability of one parent to earn enough to stay above the poverty line.³⁶ This problem is exacerbated by working conditions that make it virtually impossible for mothers to combine low-wage jobs with child raising.³⁷

The causal connection claimed by conservatives between welfare and unwed motherhood may be challenged on similar grounds: no evidence exists that welfare is an incentive for women to create single-mother

³³ The Personal Responsibility Act introduced in the newly conservative House declares that "marriage is the foundation of a successful society" and "an essential social institution which promotes the interests of children and society at large." A list of "the negative consequences of an out-of-wedlock birth on the child, the mother, and society . . ." follows. Personal Responsibility Act, *supra* note 26, at § 100. The Act prohibits mothers under the age of 18 from receiving AFDC benefits for any child born out of wedlock, regardless of when aid is sought for the child, unless the mother marries the child's father or someone who adopts the child. *Id.* at § 105(a)(3). An amendment to the House bill would allow teenage mothers to receive Medicaid, food stamps, and vouchers to pay for items "suitable for the care of the child." Mireya Navarro, *The Threat of No Benefits: Will It Deter Pregnancies?*, N.Y. Times, Apr. 17, 1995, at A1.

³⁴ Audrey Rowe, *The Feminization of Poverty: An Issue for the 90's*, 4 Yale J.L. & Feminism 73, 74 (1991). See also Donald J. Hernandez, *America's Children: Resources from Family, Government and the Economy* 284 tbl. 8.2 (1993) (stating that in 1988, 34.9% of poor children lived with 2 parents, while 57.1% lived with mother only); Bureau of the Census, U.S. Dep't of Com., *Statistical Abstract of the United States* 1993, at 470 tbl. 737 (114th ed. 1993) (stating that the 1991 poverty rate was 12.1% among married couple households with children, compared to 59.0% in single-mother households).

³⁵ Even researchers who find some causal connection between child poverty and family structure attribute only 10 to 20 percent of poverty to the rise of female-headed households. See, e.g., Hernandez, *supra* note 34, at 290, 325; Mary Jo Bane, *Household Composition and Poverty: Which Comes First?* in *Fighting Poverty: What Works and What Doesn't* 209, 321 (Sheldon H. Danziger & Daniel H. Weinberg eds., 1986).

³⁶ Marsha Garrison, *Child Support and Children's Poverty*, 28 Fam. L.Q. 475, 496-98 (1994) (reviewing Andrea H. Beller & John W. Graham, *Small Change: The Economics of Child Support* (1993) and Donald J. Hernandez, *America's Children: Resources from Family, Government and the Economy* (1993)).

³⁷ See *supra* note 31 and accompanying text.

households.³⁸ True, AFDC gives some women who might otherwise be forced to depend on a man's income the financial ability to establish their own households.³⁹ The judgment that this type of independence is bad, however, is not based on evidence that welfare causes poverty. Rather, this is a normative decision which prefers encouraging women's economic dependence on husbands over providing aid for child care directly to women or improving women's own economic opportunities in combination with state subsidies.⁴⁰

It is especially unlikely that marriage or child support will eradicate the poverty of most black children. Research suggests that there are racial differences in paths to poverty for women. Whereas many white women are left impoverished by divorce, black single mothers are more likely to be the victims of "reshuffled poverty," caused by the dissolution of a poor two-parent household.⁴¹

Even if marriage would improve poor mothers' financial well-being, this result would not justify affirmatively linking their economic options to marriage. But this is precisely the effect of "bridefare" programs that give mothers monetary rewards for marrying. The New Jersey Family Development Act, for example, allows families to earn income up to one hundred fifty percent of the poverty line income and still keep their AFDC benefits, Medicaid, and emergency housing assistance if, and only if, the mother marries.⁴² The law, however, denies this benefit to an unmarried woman who lives with the working father of her children, to a working mother who does not have a husband, and to two mothers who decide to pool their resources to support their children in a single household. Measures like the one in New Jersey do not tie welfare to marriage in order to end children's poverty; they tie welfare to marriage in order to champion the nuclear family and thereby penalize single, independent mothers.

³⁸ See *supra* note 8 and accompanying text. Efforts to discourage single motherhood by cutting welfare benefits have failed, with the proportion of families headed by unmarried women rising even with benefits falling. Jencks, *supra* note 4, at 227.

³⁹ Edelman, *supra* note 9, at 72; Fennell, *supra* note 12, at 291.

⁴⁰ See Martha L.A. Fineman, Masking Dependency: The Political Role of Family Rhetoric, 81 Va. L. Rev. 2181 (1995).

⁴¹ Bane, *supra* note 35, at 227-28, 231 tbl. 9.6 (indicating that 22% of poor black and 49% of poor white single mothers became poor at the time they established a single-mother household); Greg J. Duncan & Willard Rodgers, Longitudinal Aspects of Children's Poverty, 50 J. Marriage & Fam. 1007, 1012 (1988) ("Family structure patterns are more powerful determinants of the economic fates of white than black children.").

⁴² See Nina Perales, A "Tangle of Pathology": Racial Myth and the New Jersey Family Development Act in *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* 250 (Martha A. Fineman & Isabelle Karpin eds., 1995).

II. SUPPORTING CHILDREN THROUGH SOCIAL SECURITY

Sugarman proposes a plan that has potential appeal for both conservatives and liberals; his proposal provides child support assurance through the more favored Social Security system. Rather than abolish the stratification of welfare, Sugarman's strategy is to exploit it. In effect, he wants to beat conservatives at their own game. Sugarman's proposal accomplishes this goal by moving one group of mothers from the disfavored welfare rolls to the privileged Social Security category. In so doing, the proposal takes advantage of the powerful appeal offered by two popular models of social provision: the insurance model that views public assistance as an exercise of self-insurance,⁴³ and the child support model that relies on fathers' wages to provide for children's economic well-being.⁴⁴ By building on these models, Sugarman's plan ingeniously expands welfare payments to children while maintaining key aspects of the conservative vision. It preserves the distinction between Social Security and welfare and the linking of mothers' economic security to men, preferably husbands. More fundamentally, Sugarman's plan to tie child support to Social Security adopts the conservative rejection of collective responsibility to children, appealing instead to fathers' private interests in ensuring the security of their own children.

This plan may have the advantage of blurring the distinction between welfare and social insurance by moving more children into the latter category. As Sugarman realizes, however, conservatives will find any child support assurance scheme unacceptable if it benefits all single mothers. Therefore, Sugarman's proposal narrows the group of eligible mothers to those who can claim a man's Social Security account. As Sugarman acknowledges, this criterion will almost certainly foreclose teenage mothers from participating in the program since it is unlikely that the fathers of their children will have worked long enough to qualify for the

⁴³ Others have noted the political attractiveness of using the Social Security model for other welfare programs. See, e.g., Charles Lockhart, *Gaining Ground: Tailoring Social Programs to American Values* 4 (1989) (proposing that the "design features of social security could be adapted for the development of social merging programs directed at reducing poverty"). Both John Rawls and Ronald Dworkin advance theories of justice that rely on a model of self-insurance. Fennell, *supra* note 12, at 272-73 & n.142 (referring to John Rawls, *A Theory of Justice* (1971) and Ronald Dworkin, *What is Equality? Part 2: Equality of Resources*, 10 *Phil. & Pub. Aff.* 283, 315 (1981)).

⁴⁴ See Gordon, *supra* note 21, at 37-64 (describing how Progressive Era welfare reformers relied on the norm of the family wage); Garrison, *supra* note 36, at 476 ("Over the last twenty years, liberal and conservative policymakers alike have increasingly seen in child support a key method of reducing children's poverty and welfare dependence.").

program.⁴⁵ On the other hand, women who were once *married* to the fathers of their children are given privileged status under the Sugarman plan: they receive caretaker as well as children's benefits, even though Sugarman concedes that such discrimination is "unfair" and "illogical[]."⁴⁶

Perhaps moving a lot of children into the Social Security category is worth Sugarman's concessions to conservatives. After all, teenage mothers comprised only five percent of welfare recipients in 1991.⁴⁷ Moreover, most of the children who would be eligible for Social Security benefits under the Sugarman plan would receive larger benefits than they currently do under AFDC; additionally, mothers could supplement the benefits with earnings and child support. Nevertheless, Sugarman's proposal excludes not only the children of teenage mothers, but also all children whose fathers did not work long enough to be insured for Social Security purposes. Furthermore, some never-married mothers would be unable to claim benefits because of complications in proving paternity, while many more mothers would receive inadequate benefits. Although it is relatively easy for a worker to earn enough to be eligible for Social Security benefits, the children of fathers who have worked at low wage jobs, only sporadically or over a short period of time, would be entitled to only minimal benefits.⁴⁸ Indeed, some of the children covered by Sugarman's program would receive benefits that are substantially lower than what they currently receive under AFDC.⁴⁹

⁴⁵ Sugarman, *supra* note 2, at 2562 & n.109. Thus, Sugarman's scheme has the same effect as does the Personal Responsibility Act's denial of AFDC to unwed mothers under the age of 18. See Personal Responsibility Act, *supra* note 26, § 105.

⁴⁶ Sugarman, *supra* note 2, at 2564.

⁴⁷ Mink, *supra* note 29, at 895.

⁴⁸ Because eligibility is tied to an individual's labor market history and attachment, Social Security "favors individuals who have a long, continuous, and full-time work history." Karl E. Klare, *Toward New Strategies For Low-Wage Workers*, 1 Pub. Interest L.J. 1, 17 (1995). See generally Kingson & Berkowitz, *supra* note 21, at 57-59 (describing Social Security eligibility requirements).

⁴⁹ Telephone interview with Jill Quadagno, Author, *The Color of Welfare* (1995) (Mar. 15, 1995). For example, the surviving child of a deceased father who begins to work at age 22, works consistently for the federal minimum wage (\$4.25), and dies in 1993 at age 40, would receive a monthly Social Security benefit of \$390.00. The child's mother would receive no caretaker benefit if she had not married the father. See House Comm. on Ways and Means, 103rd Cong., 2d Sess., 1994 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means 37 tbl. 1-17 (1994) [hereinafter 1994 Green Book]. On the other hand, a two-person family, composed of caretaker and child, received in January 1994 a maximum AFDC benefit of \$549.00 in Connecticut and \$468.00 in New York City. *Id.* at 368-69 tbl. 10-12.

The limited success of efforts to collect child support provides further evidence that the benefits will probably be inadequate for many children under Sugarman's scheme. Although Sugarman has devised a novel way of collecting support from fathers, the idea of turning to child support as a method of reducing children's poverty and welfare dependence is not new.⁵⁰ Since 1975 Congress has enacted increasingly tough measures designed to recoup welfare costs by collecting child support.⁵¹ Intensified state and federal campaigns to improve child support collection have failed either to lower the poverty rate for children or to reduce significantly the number of children on welfare.⁵² The Department of Health and Human Services projects that higher child support payments would enable less than ten percent of families on welfare to rise above the poverty level.⁵³ Thus, while the state should vigorously assist mothers who seek child support from fathers with decent incomes, we cannot rely on child support to end child poverty.

The children who would be excluded from Sugarman's model or who would receive reduced benefits under his plan are disproportionately black; meanwhile, the children who would benefit most are disproportionately white. This is because white mothers are more likely to become poor as a result of separation from the father, and white fathers are more likely to earn the wages necessary to ensure adequate child assurance benefits.⁵⁴ In addition, the marriage requirement Sugarman proposes for

⁵⁰ See Garrison, *supra* note 36, at 476-79. For another child support assurance scheme, see Irwin Garfinkel, *Assuring Child Support* (1992).

⁵¹ Garrison, *supra* note 36, at 476. The Personal Responsibility Act reduces or denies AFDC benefits for a child whose paternity has not been established. See Personal Responsibility Act, *supra* note 26, at § 101.

⁵² Garrison, *supra* note 36, at 489, 502 (observing that "[n]o child support policy can raise the income of a child support obligor, nor can it recreate the economies of scale available to an intact household"). See generally Andrea H. Beller & John W. Graham, *Small Change: The Economics of Child Support* (1993) (analyzing the results of child support legislation).

⁵³ Brenner, *supra* note 26, at 123.

⁵⁴ See *supra* note 41 and accompanying text; Andrew Hacker, *Two Nations: Black, White, Separate, Hostile, Unequal* 94 (1992). For similar reasons, policies that replace welfare with child support collection tend to benefit white children and disadvantage black children. See Irwin Garfinkel, Daniel R. Meyer & Gary D. Sandefur, *The Effects of Alternative Child Support Systems on Blacks, Hispanics, and Non-Hispanic Whites*, 66 Soc. Serv. Rev. 505, 518 tbl. 3 (1992) (calculating that under Wisconsin's percentage of income child support formula, white families obtained a \$481 million annual gain whereas black and Hispanic families suffered more than a \$200 million loss).

caretaker benefits would disqualify most black mothers in the program since most black children are born to mothers who never married.⁵⁵

Sugarman's response to the exclusion of these children from his plan is to propose that their fathers be required to work. Work programs directed at fathers have a better chance of success than those directed at single mothers, because men enter a more favorable job market and usually are not hindered by child care responsibilities in their effort to find and to keep a job.⁵⁶ Despite these relative advantages, however, "bearing down" on chronically unemployed fathers will not produce the jobs or income needed to lift their children out of poverty.⁵⁷ Sugarman's proposal also subjects the excluded mothers to more intense government supervision than those who are lucky enough to qualify for the new Social Security benefits; the assumption here seems to be that the latter group's connection to wealthier men improves their ability to parent.

III. THE HISTORY OF SACRIFICE OF BLACK CHILDREN'S INTERESTS

Recent historical accounts of America's welfare system demonstrate that its stinginess in providing benefits to the poor stems not from noble conservative or liberal ideals, but from racist unwillingness to include blacks as full citizens and from reliance on the patriarchal norm of the male breadwinner.⁵⁸ This history suggests that the very exclusion of poor black children and increased government supervision of their parents will help to garner support for Sugarman's proposal. Indeed, I suspect that the main appeal of a child assurance program to many white fathers is that it would force them to support their own children, rather than others who are black.⁵⁹ Sugarman, too, acknowledges the racial undercurrent of

⁵⁵ Since 1984, over half of all black families with children have been headed by women who never married. Margaret C. Simms, *Black Women Who Head Families: An Economic Struggle*, in *Slipping Through the Cracks: The Status of Black Women* 141, 142 (Margaret C. Simms & Julianne Malveaux eds., 1986).

⁵⁶ See Pearce, *supra* note 27, at 267-69 (discussing differences in male and female poverty); Mary Joe Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U.L. Rev. 55 (1979) (describing how the work-family conflict is particularly damaging to women).

⁵⁷ See Jencks, *supra* note 4, at 122-30 (1992) (discussing rates of and reasons for black male joblessness). See generally William Julius Wilson, *The Truly Disadvantaged* (1987) (discussing the dramatic increase in black male poverty between the 1960s and 1980s).

⁵⁸ See, e.g., Gordon, *supra* note 21 (arguing that Southern congressmen specifically excluded blacks from Social Security programs to keep them in low-paying, menial jobs); Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (1994) (noting that Social Security acts were created as a racially segregated system).

⁵⁹ Cf. Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987) (concluding that white Americans are not willing to undertake the social transformation needed to achieve racial justice); Dorothy E. Roberts, *The Genetic Tie*, 62 U. Chi. L. Rev.

debates about welfare policy, noting that liberals remain wary that attacks on the poor are disguised attacks on racial and other minorities.⁶⁰ It seems, however, that liberals' unease about racial discrimination has not deterred them from sacrificing the interests of black children in order to make political bargains with conservatives.

America's welfare system originated in the Progressive Era, the result of feminist reformers' concern for the plight of poor single mothers, coupled with their misguided faith in mothers' economic dependence on their husbands' "family wage."⁶¹ The maternalist welfare legislation they secured was intended for white widows only: government workers distributed benefits according to standards that effectively excluded black mothers.⁶² The New Deal expanded upon this system, installing the stratified and unequal provision of public assistance through Social Security and Aid to Dependent Children.⁶³ Whereas Social Security recipients were *entitled* to their benefits, welfare recipients were subjected to a regime of means-testing, morals-testing, home visits and low payments.⁶⁴ Social Security also incorporated the Progressives' reliance on male-earned wages to meet the needs of families. Northern and Southern Democrats struck a deal that systematically denied blacks eligibility for Social Security benefits,⁶⁵ omitting federal eligibility standards and excluding agricultural workers and domestic servants in a deliberate effort to maintain a black menial labor caste in the South.⁶⁶ Even Aid to Dependent Children was created for white mothers, who were not expected to work.⁶⁷

The 1960s War on Poverty was an effort, propelled by the Civil Rights Movement, to eliminate the racial barriers of New Deal programs and to

209, 257-69 (1995) (discussing how race shapes the legal and social relationship between parents and children).

⁶⁰ Sugarman, *supra* note 2, at 2571-72.

⁶¹ Gordon, *supra* note 21, at 37-64, 145-81, 289-91.

⁶² Gordon, *supra* note 21, at 48 (noting that only three percent of beneficiaries of mothers' pensions were black); Handler & Hasenfeld, *supra* note 22, at 65-70.

⁶³ See Gordon, *supra* note 21, at 253-85 (discussing the legislative progression of social insurance programs).

⁶⁴ See Gordon, *supra* note 21, at 253-54 (comparing Social Security's "relatively generous and honorable" terms with ADC's "stingy and humiliating conditions"); Mink, *supra* note 29, at 880 (describing barriers to ADC eligibility).

⁶⁵ Gordon, *supra* note 21, at 276; Quadagno, *supra* note 58, at 20-24.

⁶⁶ Gordon, *supra* note 21, at 275-76; Quadagno, *supra* note 58, at 20-24. Similarly, Southern white politicians helped to defeat the Family Assistance Plan in 1972, arguing, in the words of one Congressman, that with the Plan "[t]here's not going to be anybody left to roll these wheelbarrows and press these shirts." Quadagno, *supra* note 58, at 130.

⁶⁷ Abramovitz, *supra* note 8, at 318-19.

integrate blacks into the national political economy.⁶⁸ It forced states for the first time to relax the welfare eligibility requirements that had excluded blacks. The National Welfare Rights Organization, a grassroots movement composed of welfare mothers, secured rights to benefits, raised benefits levels, and increased availability of benefits to families headed by women.⁶⁹ As a result, "by 1967, a welfare caseload that had once been eighty-six percent white had become forty-six percent nonwhite."⁷⁰

The War on Poverty programs' link to blacks' civil rights, however, is precisely what doomed them: whites opposed these programs as an infringement on their economic right to discriminate against blacks and a threat to their political supremacy.⁷¹ As a result, many of the War on Poverty programs were dismantled altogether.⁷² Meanwhile, as AFDC became increasingly associated with black mothers, it became increasingly burdened with behavior modification, work requirements and reduced effective benefit levels.⁷³ The public association of welfare with black single mothers converged with already-existing stereotypes about black people's laziness, fecundity and irresponsibility.⁷⁴

More recently, the so-called consensus between liberals and conservatives on work programs turned out to be a "Faustian bargain":⁷⁵ conservatives were able to legislate work requirements and time limits, but failed to fund liberal provisions for job training, subsidized child care, health care, job creation and other essential services.⁷⁶ Work requirement programs like this one, terminating benefits after two years, also disproport-

⁶⁸ Quadagno, *supra* note 58, at 30-31; Pearce, *supra* note 27, at 274-75.

⁶⁹ See Amott, *supra* note 8, at 288. See also Brenner, *supra* note 26, at 113 (discussing NWRO welfare reform efforts).

⁷⁰ Mink, *supra* note 29, at 891.

⁷¹ Quadagno, *supra* note 58, *passim*.

⁷² *Id.* at 175-78.

⁷³ See Mink, *supra* note 29, at 880-81.

⁷⁴ See *id.* at 891-92. See also Wahneema Lubiano, *Black Ladies, Welfare Queens, and State Minstrels: Ideological War by Narrative Means*, in *Race-ing Justice, En-Gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality* 323, 332 (Toni Morrison ed., 1992) (discussing the "welfare queen" and black women as welfare icons).

⁷⁵ Minow, *supra* note 27, at 824 n.40 (quoting Laurence E. Lynn, Jr., *Ending Welfare Reform as We Know It*, *Am. Prospect* 83, 90 (Fall 1993)).

⁷⁶ See Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (codified as amended in scattered sections of 42 U.S.C.). See also Joel F. Handler & Yeheskel Hasenfeld, *The Moral Construction of Poverty: Welfare Reform in America* 210, 215, 231 (1991) (discussing the failure of the Act's JOBS program).

tionately disadvantage blacks, who are far less likely than whites to escape the need for welfare within a short period of time.⁷⁷

IV. ALTERNATIVE STRATEGIES FOR COALITION BUILDING

The objective of welfare reform should not be to reach a consensus by adopting irrational conservative policies that sacrifice the interests of the neediest children. What would an agenda that refused to compromise with conservatives look like? It would abolish the stratification based on notions of "earned" entitlements and "undeserved" handouts. It would place individual welfare programs in the larger context of the entire welfare state and its role in fostering citizenship. It would rely on a collective obligation to poor families, rather than on fathers' private interest in their own children. And it would provide public financial assistance as part of a broader program to restructure economic, social and political institutions to make them more egalitarian, democratic and just.

The last few times I wrote about American welfare policy, I ended on a pessimistic note; I expressed doubt that the majority of white Americans would treasure poor black children enough to seek to bring them into full membership in the national community, and I wondered how an expanded welfare state would compensate white Americans for their loss of racial privilege.⁷⁸ Still, it would be possible to achieve the agenda I just mentioned by building political coalitions among those who share a common interest in implementing an inclusive and redistributive program.

Liberal and progressive welfare reformers have suggested a number of strategies for this sort of coalition building. Some advocate programs that base eligibility on universal criteria as a way of eliminating welfare's stratified structure and building broad-based support.⁷⁹ Mary Jo Bane and David T. Ellwood, for example, recently proposed replacing a welfare system that meets all of the needs of one stigmatized group with an array of programs that would serve a broader population, including benefits such as universal health insurance, mandatory child support and

⁷⁷ 1994 Green Book, *supra* note 49, at 446 tbl. 10-46 (between 1980 and 1989, 19.8% of nonwhite persons lived in households receiving AFDC benefits for three to ten years, compared to only three and a half percent of white persons living in such households).

⁷⁸ See Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 Conn. L. Rev. 871, 878 (1994); Dorothy E. Roberts, *Welfare Yesterday and Today*, 24 Contemp. Soc. 1, 3 (1995) (reviewing Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare* (1994) and Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (1994)).

⁷⁹ See, e.g., Gordon, *supra* note 21, at 305; Robert Kuttner, *The Economic Illusion: False Choices Between Prosperity and Social Justice* 40 (1984); Lockhart, *supra* note 43, at 2; Wilson, *supra* note 57, at 154-55.

earned income tax credits to subsidize low-wage jobs.⁸⁰ A more expansive universal program might also include government subsidies for day care, decent housing, family allowances and a higher minimum wage. These universal programs could be part of an aggressive jobs policy, advanced by a coalition of poor people's advocates and organized labor, that recognizes the common interest of welfare recipients and low wage workers in raising the labor market floor.⁸¹

It is doubtful, however, that universal programs alone can eliminate the institutionalized racism and sexism that perpetuate poverty.⁸² The early civil rights movement illustrates the potential of black resistance when united with other progressive peoples' movements for transforming institutional structures. In *Keeping Faith*,⁸³ theologian Cornel West offers Dr. Martin Luther King, Jr.'s organizing strategies during the first stage of the civil rights movement as an example of a successful progressive coalition that crossed boundaries of class and race to advocate structural change.⁸⁴ West observes that King was able to consolidate the most powerful progressive forces available in the black Southern community at that time: "the cultural potency of prophetic black churches, the skills of engaged black preachers, trade-unionists and professionals, and the spirit of rebellion and resistance of the black working poor and underclass."⁸⁵ The black freedom movement eliminated the most blatant forms of white repression in the South, including the use of terror as a mode of social

⁸⁰ David T. Ellwood, Reducing Poverty by Replacing Welfare, in Mary Jo Bane & David T. Ellwood, *Welfare Realities: From Rhetoric to Reform* 143, 148 (1994). Christopher Jencks similarly proposes a program of government assistance to all parents with low-wage jobs, including increasing the Earned Income Tax Credit, granting tax credits for child care and housing expenses, and providing universal health insurance. Jencks, *supra* note 4, at 233-34. Sugarman's child support assurance plan might fit this model, but its criteria for eligibility are not sufficiently inclusive. Although tying child assurance to Social Security might unite middle-class and working-class women with poor mothers who all receive benefits from the same program, see Sugarman, *supra* note 2, at 2568, it would further marginalize the poor mothers who do not qualify. It might also deepen the racial divide between "deserving" and "undeserving" welfare recipients since the children excluded from the program will be disproportionately black.

⁸¹ See Klare, *supra* note 48, at 6-12. See also Handler, *supra* note 9, at 868 (noting that reforms such as universal health care and the Earned Income Tax Credit "blur the distinction between the single parent family moving off welfare, or combining welfare and work, and the non-welfare family").

⁸² See Quadagno, *supra* note 38, at 156. See also Robert Greenstein, Universal and Targeted Approaches to Relieving Poverty: An Alternative View, in *The Urban Underclass* 437, 455-58 (Christopher Jencks & Paul E. Peterson eds., 1991) (discussing the need to combine universal and targeted approaches).

⁸³ Cornel West, *Keeping Faith: Philosophy and Race in America* (1993).

⁸⁴ *Id.* at 271, 272-73.

⁸⁵ *Id.* at 273.

control, and won federal commitment to black civil and voting rights, although it failed to sustain the momentum necessary to transform power relationships in America.

The common concerns of working mothers offer another basis for progressive coalition building. Lucie White calls on middle-class and elite women to follow the footsteps of their Progressive Era foremothers, who championed the first programs of public spending for poor single mothers and their children.⁸⁶ Contemporary women, White suggests, could replace the Progressives' focus on "pensions to protect poor women from the workforce" with "reforms for all parents in the workplace itself."⁸⁷ Middle-class, working class, and jobless poor mothers share an interest in transforming the gendered division of labor that assigns unpaid caretaking tasks to women without public support and structures the workplace around men's needs. Other feminist reformers have emphasized the unifying theme that mothers' labor in the home as well as in the market should be valued and compensated.⁸⁸

Of course, such alliances will be difficult to forge. These groups will have to make political compromises among themselves to resolve conflicting interests, strategies, and notions of justice, just as liberals and conservatives have bargained over welfare policy. The allure of white privilege continues to pose a formidable obstacle to radical reform. Yet I place far more hope in the possibility of forming progressive coalitions to achieve economic, racial and gender justice than I would in any welfare "consensus" reached between liberals and conservatives.

⁸⁶ See Lucie E. White, *On the "Consensus" To End Welfare: Where Are the Women's Voices?*, 26 Conn. L. Rev. 843, 846 (1994).

⁸⁷ *Id.* at 853. See also Brenner, *supra* note 26, at 127-28 (proposing alliances between groups of women based on a politics that emphasizes combining work with parenting for all families).

⁸⁸ See, e.g., Funicello, *supra* note 11, at 269-72, 308-09 (advocating accounting women's work in the home as part of the gross national product); Pearce, *supra* note 27, at 275 (arguing that the welfare system cannot be fundamentally changed without challenging the distinction between women's paid work in the market and unpaid work in the home). See also Martha A. Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* (1995) (arguing that the allocation of dependent care is typically gendered and that gendered role divisions frustrate the family's ability as a social institution to care for dependents); Fineman, *supra* note 40 (same). On the debate among feminists about whether their welfare strategy should center on providing working mothers with support or on demanding payments for women to care for their children, see Brenner, *supra* note 26, at 125-29.